MONTANA LEGISLATIVE HISTORY

Chapter FV 19 37

Bill H _____ S 19 Original bill & history /C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) _____	___C	Hearing Date(s) 1/20	/C
_____	___C	1/26	/C
_____	___C	1/27	/C
_____	___C	_____	___C
Date Out _____	___C		

Nothing Doing

Did this bill originate in an interim committee? ___Yes /No

Committee _____ Report _____

SENATE BILL NO. 19

INTRODUCED BY WASS.

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO UNFAIR COMPETITION AND DISCRIMINATION, MAKING CERTAIN UNFAIR AND DISCRIMINATORY PRACTICES UNLAWFUL, DEFINING THE DUTIES OF THE ATTORNEY GENERAL IN REGARD THERETO, DECLARING CERTAIN CONTRACTS ILLEGAL AND FORBIDDING RECOVERY THEREON, PROVIDING FOR ACTIONS TO ENJOIN UNFAIR COMPETITION AND DISCRIMINATION AND TO RECOVER DAMAGES THEREFOR, MAKING THE VIOLATION OF THE PROVISIONS OF THIS ACT A MISDEMEANOR AND PROVIDING PENALTIES AND PROVIDING FOR ITS ADMINISTRATION BY THE MONTANA TRADE COMMISSION."

Be It Enacted by the Legislative Assembly of the State of Montana:

SECTION 1. It shall be unlawful for any person, firm, or corporation, doing business in the State of Montana and engaged in the production, manufacture, distribution or sale of any commodity, or product, or service or output of a service trade, of general use or consumption, or the product or service of any public utility, with the intent to destroy the competition of any regular established dealer in such commodity, product or service, or to prevent the competition of any person, firm, private corporation, or municipal or other public corporation, who or which in good faith, intends and attempts to become such dealer, to discriminate between different sections, communities or cities or portions thereof, or between different locations in such sections, communities, cities or portions thereof in this State, by selling or furnishing such commodity, product or service at a lower rate in one section, community or city, or any portion thereof, or in one location in such section, community, or city or any portion thereof, than in another after making allowance for difference, if any, in the grade or quality, quantity and in the actual cost of transportation from the point of production, if a raw product or commodity, or from the point of manufacture, if a manufactured product or commodity.

This Act shall not be construed to prohibit the meeting in good faith of a competitive rate, or to prevent a reasonable classification of service by public utilities for the purpose of establishing rates. The inhibition hereof against locality discrimination shall embrace any scheme of special rebates, collateral contracts or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this Act.

The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers purchasing upon like terms and conditions, to the injury of a competitor and where such payment or allowance tends to destroy competition, is an unfair trade practice and any person, persons, firm, partnership, corporation, or association resorting to such trade practice shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding five hundred dollars ($500.00), or by imprisonment not exceeding six months, or by both such punishments, in the discretion of the court.

SECTION 2. Any person who, either as director, officer or agent of any firm or corporation or as agent of any person, violating the provisions of this Act, assists or aids, directly or indirectly in such violation shall be responsible therefor equally with the person, firm or corporation for whom or which he acts.

In the prosecution of any person as officer, director or agent, it shall be sufficient to allege and prove the unlawful intent of the person, firm or corporation for whom or which he acts.

SECTION 3. It shall be unlawful for any person, partnership, firm, corporation, joint stock company, or other association engaging in business within this State, to sell, offer for sale or advertise for sale any article or product, or service or output of a service trade, at less than the cost thereof to such vendor, or give, offer to give or advertise the intent to give away any article or product, or service or output of a service trade for the purpose of injuring competitors and destroying competition, and he or it shall also be guilty of a misdemeanor, and on conviction thereof shall be subject to the penalties set out in Section 11 of this Act for any such act.

The term "cost" as applied to production is hereby defined as including the cost of raw materials, labor and all overhead expenses of the producer; and as applied to distribution "cost" shall mean the invoice or replacement cost, whichever is lower, of

the article or product to the distributor and vendor plus the cost of doing business by said distributor and vendor.

The "cost of doing business" or "overhead expense" is defined as all costs of doing business incurred in the conduct of such business and must include, without limitation the following items of expense: labor (including salaries of executives and officers), rent, interest on borrowed capital, depreciation, selling cost, maintenance of equipment, delivery costs, credit losses, all types of licenses, taxes, insurance and advertising.

SECTION 4. In establishing the cost of a given article or product to the distributor and vendor, the invoice cost of said article or product purchased at a forced, bankrupt, closeout sale, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of date of said sale of said article or product replaced through the ordinary channels of trade, unless said article or product is kept separate from goods purchased in the ordinary channels of trade and unless said article or product is advertisied and sold as merchandise purchased at a forced, bankrupt, closeout sale, or by means other than through the ordinary channels of trade, and said advertising shall state the conditions under which said goods were so purchased, and the quantity of such merchandise to be sold or offered for sale.

SECTION 5. In any injunction proceeding or in the prosecution of any person as officer, director or agent, it shall be sufficient to allege and prove the unlawful intent of the person, firm or corporation for whom or which he acts. Where a particular trade or industry, of which the person, firm or corporation complained against is a member, has an established cost survey for the locality and vicinity in which the offense is committed, the said cost survey shall be deemed competent evidence to be used in proving the costs of the person, firm or corporation complained against within the provisions of this Act.

Sec. 5½ added.

SECTION 6. The provisions of Sections 3, 4 and 5 shall not apply to any sale made:

(a) In closing out in good faith, the owner's stock or any part thereof, for the purpose of discontinuing his trade in any such stock or commodity, and in the case of the sale of seasonal goods or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation, provided notice is given to the public thereof;

(b) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof;

(c) By an officer acting under the orders of any court;

(d) In an endeavor made in good faith to meet the legal prices of a competitor as herein defined selling the same article or product or service or output of a service trade, in the same locality or trade area.

Any person, firm or corporation who performs work upon, renovates, alters or improves any personal property belonging to another person, firm or corporation, shall be construed to be a vendor within the meaning of this Act.

SECTION 7. The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers purchasing upon like terms and conditions, to the injury of a competitor and where such payment or allowance tends to destroy competition, is an unfair trade practice and any person, firm, partnership, corporation, or association resorting to such trade practice shall be deemed guilty of a misdemeanor and on conviction thereof shall be subject to the penalties set out in Section 11 of this Act.

Provided, however, that nothing in this Act shall prevent a cooperative association, organized and operating on a true cooperative basis, from returning to the members, producers or consumers the whole or any part of the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to or through the association.

SECTION 8. Upon the third violation of any of the provisions of Sections 1 to 7, inclusive, of this Act by any corporation, it shall be the duty of the Attorney General to institute proper suits or quo warranto proceedings in any court of competent jurisdiction for the forfeiture of its charter, rights, franchises or privileges and powers exercised by such corporation, and to permanently enjoin it from transacting business in this State. If in such action the court shall find that such corporation is violating or has violated any of the provisions of Sections 1 to 7, inclusive, of this Act, it must enjoin said corporation from doing business in this State permanently or for such time as the court shall order, or must annul the charter, or revoke the franchise of such corporation.

SECTION 9. Any contract, express or implied, made by any person, firm, or cor-

poration in violation of any of the provisions of Sections 1 to 7, inclusive, of this Act, is declared to be an illegal contract and no recovery thereon shall be had.

SECTION 10. Any person, firm, private corporation or municipal or other public corporation, or trade association, may maintain an action to enjoin a continuance of any act or acts in violation of Sections 1 to 7, inclusive, of this Act and, if injured thereby, for the recovery of damages. If, in such action, the court shall find that the defendant is violating or has violated any of the provisions of Sections 1 to 7, inclusive, of this Act, it shall enjoin the defendant from a continuance thereof. It shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in said action shall be entitled to recover from the defendant three times the amount of the actual damages, if any, sustained.

Any defendant in an action brought under the provisions of this Section may be required to testify under the provisions of the Code of Civil Procedure of this State, in addition to the books and records of any such defendant may be brought into court and introduced, by reference, into evidence; provided, however, that no information so obtained may be used against the defendant as a basis for a misdemeanor prosecution under the provisions of Sections 1 to 7, inclusive, and 11 of this Act.

SECTION 11. Any person, firm or corporation, whether as principal, agent, officer or director, for himself, or itself, or for another person, or for any firm or corporation, or any corporation, who or which shall violate any of the provisions of Sections 1 to 7, inclusive, of this Act, is guilty of a misdemeanor for each single violation and upon conviction thereof, shall be punished by a fine of not less than one hundred ($100.00) dollars, nor more than one thousand ($1,000.00) dollars, or by imprisonment not exceeding six months or by both said fine and imprisonment, in the discretion of the court.

SECTION 12. The Montana Trade Commission shall have the administration of this Act; and the members thereof shall not receive any additional compensation for their services other than their salaries prescribed by law.

SECTION 13. If any section, sentence, clause or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the Act. The Legislature hereby declares that it would have passed

this Act, and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more other sections, sentences, clauses or phrases be declared unconstitutional.

SECTION 14. The Legislature declares that the purpose of this Act is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented. This Act shall be literally construed that its beneficial purposes may be subserved.

SECTION 15. This Act shall be known and designated as the "Unfair Practices Act."

SECTION 16. This Act is hereby declared to be an urgency measure necessary for the immediate preservation of the public peace, health and safety, and shall therefore go into immediate effect. The facts constituting the necessity are as follows:

The sale at less than cost of goods obtained at forced, bankrupted, close out, and other sales outside of the ordinary channels of trade is destroying healthy competition. If such practices are not immediately stopped, many more businesses will be forced into bankruptcy. In order to prevent such occurrences, it is necessary that this Act go into effect immediately.

SECTION 17. This Act shall be in full force and effect from and after its passage and approval.

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Coll. No._____ Bx/Fd No._____

MEETING OF THE JUDICIARY COMMITTEE

January 20, 1937

All the members were present. Chairman Meyer presided.

Original Senate Bill No. 23 was given to Senator Simmons.

Senate Bill No. 19 by Wass was taken under consideration. The proponent of the bill explained the same to the Committee. Chairman Meyer appointed a sub-committee composed to Senators Nass, Cotter and Foor to compare the bill with the California bill.

It was moved and seconded that a bill amending Section 9939 R.C.M. of 1935 relating to the venue in eminent domain proceedings be introduced as a committee measure. Motion carried and so ordered.

Original Bill No. 19 by Wass given to Senator Nass.
Citations for the Wass Bill:
Old Dearborn Distributing Corp. 81 U.S. Supreme Court Reports, Law Ed. 130.
81 U. S. 183 Law Ed.

It was moved and seconded that the committee recommend that Senate Bill No. 28 do pass.

Moved and Seconded that the meeting adjourn. Motion carried.

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MEETING OF THE JUDICIARY COMMITTEE

January 26, 1937

All the members were present.

Moved and seconded that Senate Bill No. 49 be recommended do pass. Motion carried and so ordered.

Senate Bill No. 3 was taken under consideration. Moved and seconded that the amendments suggested by Senator Campbell be adopted. Motion carried and so ordered. Moved and seconded that Senate Bill No. 3 be postponed for another day. Motion carried.

Senator Pauline explained Senate Bill No. 21 relating to Governor's powers. Chairman appointed a sub-committee to consider the bill consisting of: Meyer, Foor, Cotter and Nass.

A bill relating to the form of acknowledgment by corporations was explained. Action on the bill was postponed.

Senate Bill No. 53 under consideration. The Chair appointed Senator Paul Smith as sub-committee to discuss the Bill with Senator Foor and report on it tomorrow.

The sub-committee on Senate Bill No. 19 reported as follows: Moves to amend Section one by striking all of the section beginning with line 10 on page 2. Also amend Section 7 by adding the following paragraph at the end of Section 7: "Provided, however, that nothing in this Act shall prevent a co-operative association from returning to members, producers or consumers the whole, or any part of, the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to or through the association."

Original Senate Bill No. 19 returned by Senator Foor.

Moved and seconded that the Committee adjourn. Motion carried.

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MEETING OF THE JUDICIARY COMMITTEE

January 27, 1937

All the Members of the Committee were present.

Moved and seconded that the three bills proposed on acknowledgments be introduced as committee measures. Motion carried.

Moved and seconded that a bill amending Section 1748 be not introduced as a committee bill. Motion carried.

Moved and seconded that Senate Bill No. 3 be amended to have the opening and closing hours from twelve noon to twelve midnight. Motion carried.

Moved and seconded that the action on Senate Bill No. 3 be reconsidered. Motion carried.

Moved and seconded that the Chairman be authorized to draw up a substitute bill for Senate Bill No. 3. Motion carried.

Senate Bill No. 53 under consideration. Amendments submitted by Senator Smith. Moved and seconded that the amendments proposed by Senator Smith be adopted. Motion carried. The Bill to be further amended and held over for another day.

Moved and seconded that the bill relating to demurrers in criminal actions be introduced as a committee measure. Motion carried.

Amendments to Senate Bill No. 19 by Foor were approved. Moved and seconded that Senate Bill No. 19 be carried over for another day. Original bill given to Senator Foor.

Moved and seconded that House Bill No. 55 be concurred in. Motion carried.

Original Senate Bill No. 53 give to Senator Smith.

Moved and seconded that House Bill No. 60 be postponed another day.

Moved and seconded that the meeting adjourn. Motion carried.

Sale of the Revised Codes of Montana, 1935, by the Secretary of State, and Repealing All Acts and Parts of Acts in Conflict Herewith.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1. That Section 5553.8 of the Revised Codes of Montana, 1935, be and the same is hereby amended to read as follows:

Distribution of the revised codes of Montana, 1935.

Section 5553.8. The secretary of state, upon receipt of said published codes, shall distribute the same, or so many of them as may be necessary, in the following manner, to wit:

To each department of the state government of Montana, one copy.

Legislators to pay actual cost price.

To each member of the 24th and 25th legislative assemblies, one copy upon the payment to the State of Montana by any member receiving such copy the actual cost price thereof to the state.

To the state law library, two copies.

To the Library of Congress, two copies.

To the state historical and miscellaneous library, one copy.

To the state law librarian, for the purpose of exchanges with libraries, universities, and other institutions, such number of copies, not to exceed one hundred (100) as may be required by him.

To each of the component institutions of University of Montana, one copy.

To each of the United States district judges for the district of Montana, and to each of the judges of the supreme and district courts of Montana, one copy.

To the county clerk of each county, three copies for the use of the various county officials.

To each county attorney, and to each clerk of the district court, one copy.

Discretionary powers of secretary of state to distribute.

The secretary of the state may further distribute the Revised Codes of Montana, of 1935, at his discretion, to other departments of government not herein enumerated

when the same are deemed absolutely necessary, and may exchange new sets for worn out sets when the latter are returned to his office.

Repealing clause.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This act shall be in full force and effect from and after its passage and approval.

Approved March 3, 1937.

CHAPTER 80

An Act Relating to Unfair Competition and Discrimination, Making Certain Unfair and Discriminatory Practices Unlawful, Defining the Duties of the Attorney General in Regard Thereto, Declaring Certain Contracts Illegal and Forbidding Recovery Thereon, Providing for Actions to Enjoin Unfair Competition and Discrimination and to Recover Damages Therefor, Making the Violation of the Provisions of This Act a Misdemeanor and Providing Penalties and Providing for Its Administration by the Montana Trade Commission.

Be it enacted by the Legislative Assembly of the State of Montana:

Price discriminations to destroy competition unlawful.

Section 1. It shall be unlawful for any person, firm, or corporation, doing business in the State of Montana and engaged in the production, manufacture, distribution or sale of any commodity, or product, or service or output of a service trade, of general use or consumption, or the product or service of any public utility, with the intent to destroy the competition of any regular established dealer in such commodity, product or service, or to prevent the competition of any person, firm, private corporation, or municipal or other public corporation, who or which in good faith, intends and attempts to become such dealer, to discriminate between different sections, communities or cities or portions thereof, or between different locations in such sections, communities, cities or portions thereof in this state, by selling or furnishing such commodity, product or service at a lower rate in one section, community or city, or any portion thereof,

Distribution or sale of any commodity or service.

Discrimination defined.

Sectional and local.

Allowance for different grade or quality and costs of transportation.

May meet competition.

Classifying service.

Rebates and indirect evasions of act prohibited.

or in one location in such section, community, or city or any portion thereof, than in another after making allowance for difference, if any, in the grade or quality, quantity and in the actual cost of transportation from the point of production, if a raw product or commodity, or from the point of manufacture, if a manufactured product or commodity. This act shall not be construed to prohibit the meeting in good faith of a competitive rate, or to prevent a reasonable classification of service by public utilities for the purpose of establishing rates. The inhibition hereof against locality discrimination shall embrace any scheme of special rebates, collateral contracts or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this act.

Sale at less than contract price.

Liability.

Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pusuant to the provision of Section 1 of this act, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby.

Persons responsible.

Section 2. Any person who, either as director, officer or agent of any firm or corporation or as agent of any person, violating the provisions of this act, assists or aids, directly or indirectly in such violation shall be responsible therefor equally with the person, firm or corporation for whom or which he acts.

Unlawful intent.

In the prosecution of any person as officer, director or agent, it shall be sufficient to allege and prove the unlawful intent of the person, firm, or corporation for whom or which he acts.

Unlawful to sell at less than cost.

Violation a misdemeanor.

Section 3. It shall be unlawful for any person, partnership, firm, corporation, joint stock company, or other association engaged in business within this state, to sell, offer for sale or advertise for sale any article or product, or service or output of a service trade, at less than the cost thereof to such vendor, or give, offer to give or advertise the intent to give away any article or product, or service or output of a service trade for the purpose of injuring competitors and destroying competition, and he or it shall also be guilty of a misdemeanor, and on conviction thereof shall be subject to the penalties set out in Section 11 of this act for any such act.

"Cost" defined.

The term "cost" as applied to production is hereby defined as including the cost of raw materials, labor and all overhead expenses of the producer; and as applied to distribution "cost" shall mean the invoice or replacement cost, whichever is lower, of the article or product to the distributor and vendor plus the cost of doing business by said distributor and vendor.

"Cost of doing business."

The "cost of doing business" or "overhead expense" is defined as all costs of doing business incurred in the conduct of such business and must include, without limitation the following items of expense: labor (including salaries of executives and officers), rent, interest on borrowed capital, depreciation, selling cost, maintenance of equipment, delivery costs, credit losses, all types of licenses, taxes, insurance and advertising.

Articles purchased at forced, bankrupt or close out sales.

Not basis for establishing cost price.

Exception.

Section 4. In establishing the cost of a given article or product to the distributor and vendor, the invoice cost of said article or product purchased at a forced, bankrupt, closeout sale, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of date of said sale of said article or product replaced through the ordinary channels of trade, unless said article or product is kept separate from goods purchased in the ordinary channels of trade and unless said article or product is advertised and sold as merchandise purchased at a forced, bankrupt, closeout sale, or by means other than through the ordinary channels of trade, and said advertising shall state the conditions under which said goods were so purchased, and the quantity of such merchandise to be sold or offered for sale.

Intent— allegation and proof.

Cost survey as evdience.

Section 5. In any injunction proceeding or in the prosecution of any person as officer, director or agent, it shall be sufficient to allege and prove the unlawful intent of the person, firm or corporation for whom or which he acts. Where a particular trade or industry, of which the person, firm or corporation complained against is a member, has an established cost survey for the locality and vicinity in which the offense is committed, the said cost survey shall be deemed competent evidence to be used in proving the costs of the person, firm or corporation complained against within the provisions of this act.

Agricultural products.

Fair price—how established.

Section 5-A. The following method shall be used in determining fair prices for agricultural products sold on local markets, in any trade area, district or city in which the major portion of any agricultural commodity or product is produced within or adjacent to said trade area, city or district.

Determination by 75% of producers of article.

Whenever 75% of producers of any agricultural product or commodity marketing said products or commodities within any trade area, district or city shall determine what is a fair price based upon competitive and other factors for their product or commodity, it shall be deemed the fair price for such product or commodity under the terms of this act.

Filed with Montana trade commission.

Hearing.

Consumers entitled to appear.

Such producers through their regular constituted agents shall file with the Montana trade commission such fair price and request a hearing for the establishment of fair prices to jobbers, wholesalers, retailers and consumers of said agricultural products or commodities. Any organization representing consumers shall not be denied representation at such a meeting.

Violation to sell for less than price established by commission.

After the establishment of such a schedule of fair prices for said agricultural products or commodities, it shall be a violation of this act for any producer, jobber, wholesaler or retailer to sell or buy any agricultural commodity or product below such price as established by the Montana trade commission and such action shall be deemed a violation of this act and punishable under the terms provided in this act.

Exceptions.

Section 6. The provisions of Sections 3, 4 and 5 shall not apply to any sale made:

Closing out or discontinuing stock or commodity.

(a) In closing out in good faith, the owner's stock or any part thereof, for the purpose of discontinuing his trade in any such stock or commodity, and in the case of the sale of seasonal goods or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation, provided notice is given to the public thereof;

Perishable goods.

Damaged goods.

(b) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof;

Sale by an officer.

(c) By an officer acting under the orders of any court;

May meet legal prices of competitor.

(d) In an endeavor made in good faith to meet the legal prices of a competitor as herein defined selling the same article or product, or service or output of a service trade, in the same locality or trade area.

Vendor defined.

Any person, firm or corporation who performs work upon, renovates, alters or improves any personal property belonging to another person, firm or corporation, shall be construed to be a vendor within the meaning of this act.

Rebates, refunds, and unearned discounts.

Section 7. The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers purchasing upon like terms and conditions, to the injury of a competitor and where such payment or allowance tends to destroy competition, is an unfair trade practice and any person, firm, partnership, corporation, or association resorting to such trade practice shall be deemed guilty of a misdemeanor and on conviction thereof shall be subject to the penalties set out in Section 11 of this act.

Unfair when.

Penalty.

Cooperative associations.

Provided, however, that nothing in this act shall prevent a cooperative association, organized and operating on a true cooperative basis, from returning to the members, producers or consumers the whole or any part of the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to or through the association.

When attorney general to act.

Section 8. Upon the third violation of any of the provisions of Sections 1 to 7, inclusive, of this act by any corporation, it shall be the duty of the attorney general to institute proper suits or quo warranto proceedings in any court of competent jurisdiction for the forfeiture of its charter, rights, franchises or privileges and powers exercised by such corporation, and to permanently enjoin it from transacting business in this state. If in such action the court shall find that such corporation is violating or has violated any of the provisions of Sections 1 to 7, inclusive, of this act, it must enjoin said corporation from doing business in this state permanently or for such time as the court shall order, or must annul the charter, or revoke the franchise of such corporation.

Nature of proceeding.

Court to enjoin doing of business.

Contracts—when illegal.

Section 9. Any contract, express or implied, made by any person, firm or corporation in violation of any of the provisions of Sections 1 to 7, inclusive, of this act, is declared to be an illegal contract and no recovery thereon shall be had.

Who may enjoin violations.

Section 10. Any person, firm, private corporation or municipal or other public corporation, or trade association, may maintain an action to enjoin a continuance of any act or acts in violation of Sections 1 to 7, inclusive, of this act and, if injured thereby, for the recovery of damages. If, in such action, the court shall find that the defendant is violating or has violated any of the provisions of Sections 1 to 7, inclusive, of this act, it shall enjoin the defendant from a continuance thereof. It shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in said action shall be entitled to recover from the defendant three times the amount of the actual damages, if any, sustained.

Recovery of damages.

When court shall enjoin.

Triple damages allowed, when.

Defendant required to testify and produce records.

Any defendant in an action brought under the provisions of this section may be required to testify under the provisions of the code of civil procedure of this state, in addition the books and records of any such defendant may be brought into court and introduced, by reference, into evidence; provided, however, that no information so obtained may be used against the defendant as a basis for a misdemeanor prosecution under the provisions of Sections 1 to 7, inclusive, and 11 of this act.

Information not available in prosecution for misdemeanor.

Penalties for violations of act.

Section 11. Any person, firm or corporation, whether as principal, agent, officer or director, for himself, or itself, or for another person, or for any firm or corporation, or any corporation, who or which shall violate any of the provisions of Sections 1 to 7, inclusive, of this act, is guilty of a misdemeanor for each single violation and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars ($100.00), nor more than one thousand dollars ($1,000.00), or by imprisonment not exceeding six months or by both said fine and imprisonment, in the discretion of the court.

Montana trade commission to administer act.

No extra compensation.

Section 12. The Montana trade commission shall have the administration of this act; and the members thereof shall not receive any additional compensation for their services other than their salaries prescribed by law.

Saving clause.

Section 13. If any section, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the act. The legislature hereby declares that it would have passed this act, and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more other sections, sentences, clauses or phrases be declared unconstitutional.

Purpose of act.

Section 14. The legislature declares that the purpose of this act is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented. This act shall be literally construed that its beneficial purposes may be subserved.

Name of act.

Section 15. This act shall be known and designated as the "Unfair Practices Act".

Urgency measure.

Section 16. This act is hereby declared to be an urgency measure necessary for the immediate preservation of the public peace, health and safety, and shall therefore go into immediate effect. The facts constituting the necessity are as follows:

Why act is necessary.

The sale at less than cost of goods obtained at forced, bankrupted, close out, and other sales outside of the ordinary channels or trade is destroying healthy competition. If such practices are not immediately stopped, many more businesses will be forced into bankruptcy. In order to prevent such occurrences, it is necessary that this act go into effect immediately.

Section 17. This act shall be in full force and effect from and after its passage and approval.

Approved March 3, 1937.

CHAPTER 81

An Act to Amend Section 182.1, Revised Codes of Montana of 1935, Authorizing the State Depository Board to Permit the State Treasurer to Invest Surplus Cash in His Office in Registered Warrants of the State of Montana, and/or Treasury Certificates of the Federal